SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL

Defendants.

Index No. 451625/2020
Motion Seq. No. 21

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO ORDER TO SHOW CAUSE TO SEAL

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Motion Seq. No. 21

Plaintiff New York Attorney General Letitia James ("OAG") respectfully submits this memorandum of law in opposition to nonparty Christopher Cox's order to show cause to permanently seal his employment agreement with the National Rifle Association of America ("NRA") and related documents. NYSCEF No. 509.

PRELIMINARY STATEMENT

Nonparty Christopher Cox has not, and cannot, meet the high burden of establishing the compelling circumstances required to permanently seal certain exhibits Mr. Cox has offered in support of an application for costs and attorney's fees stemming from a subpoena duces tecum served on Mr. Cox by the OAG in this action.[1] Mr. Cox's sealing application is particularly inappropriate in this government enforcement action, which concerns, among other things, the administration of charitable assets by the NRA, a state-regulated charitable organization. The very information that Mr. Cox seeks to seal is required to be publicly disclosed by the NRA in annual regulatory filings.

STATEMENT OF FACTS

Mr. Cox has requested that his employment agreement with the NRA (the "Employment Agreement") and communications that quote allegedly confidential provisions thereof be permanently sealed. NYSCEF No. 483 at 2. Mr. Cox cites potential competitive harm to the NRA as the reason sealing is necessary, since the Employment Agreement contains allegedly "proprietary business information" such as "information related to Mr. Cox's salary and benefits during his tenure as an employee of the NRA." *Id*.

[1] With respect to Mr. Cox's application for costs, NYSCEF No. 486, the OAG has agreed to pay the reasonable costs of production Mr. Cox has incurred in connection with his response to the OAG's subpoena, subject to receipt of invoices from Mr. Cox and assuming production does in fact occur. But the OAG objects to paying Mr. Cox's attorney's fees, which have been incurred as a result of the NRA's blocking of Mr. Cox's production. *See* NYSCEF No. 500 (OAG's letter to Mr. Cox concerning costs).

Mr. Cox's salary and benefits as an executive of the NRA were publicly reported by the NRA annually in its Form 990 filing with the Internal Revenue Service ("IRS"). Affirmation of Stephen C. Thompson in Support of Plaintiff's Opposition to Order to Show Cause to Seal dated December 20, 2021 ("Affirmation") Ex. A at PDF pgs. 8, 41, 43-44. This public disclosure is required for tax exempt non-profits like the NRA. Mr. Cox has not pointed to any non-public information contained in the Employment Agreement that warrants the extraordinary remedy of permanent sealing. Certainly, there is no basis to seal the Employment Agreement if it is used at a court proceeding, in a submission to the court, or at trial. Furthermore, the NRA's employment and post-employment agreements with Defendant Wayne LaPierre, the NRA's highest paid executive, are already publicly available since they were admitted as exhibits during the NRA's failed bankruptcy attempt in Texas earlier this year. Affirmation Exhibits B and C.

ARGUMENT

A movant is required to demonstrate that "good cause" exists in order for court records to be sealed. 22 N.Y.C.R.R. 216.1(a). "New York has a long-standing, sound public policy that all judicial proceedings, both civil and criminal, are presumptively open to the public" and sealing "should not be permitted except in compelling circumstances." *Gliklad v. Deripaska*, 185 A.D.3d 512, 513 (1st Dep't 2020) (internal quotation marks omitted). There is a "broad presumption of entitlement to judicial proceedings and court records" in New York. *Norddeutsche Landesbank Girozentrale v. Tilton*, 165 A.D.3d 447, 448-49 (1st Dep't 2018). The presumption of public access is especially strong in the context of this regulatory enforcement action, where the public interest in observing the proceedings is high. *See Gannett Co. v. DePasquale*, 443 U.S. 368, 387 n.15 (1979) ("Indeed, many of the advantages of public criminal trials are equally applicable in the civil trial context. While the operation of the judicial process in civil cases is often of interest only to the parties in the litigation, this is not always the case. Thus, in some civil cases the public interest

in access, and the salutary effect of publicity, may be as strong as, or stronger than, in most criminal cases.") (internal citations omitted).

"[B]ecause confidentiality is the exception and not the rule, the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access." *Maxim, Inc.* v. *Feifer*, 145 A.D.3d 516, 517 (1st Dep't 2016) (internal quotation marks omitted). Even in a commercial setting, for information to be protected from public disclosure,

> the material [a movant] seeks to have sealed [must] contain[] trade secrets, confidential business information, or proprietary information. Such materials and information generally would involve closely guarded information about current or future business plans or strategies, the disclosure of which likely would provide an advantage to a competitor.

Cortlandt Street Recovery Corp. v. Bonderman, 146 N.Y.S.3d 391, 394 (Sup. Ct. N.Y. Cnty. 2021) (internal quotation marks and citations omitted). Financial information that is not "trade secrets or information that could result in a competitive disadvantage" does not merit sealing. *Norddeutsche*, 165 A.D.3d at 449.

Here, the NRA is a not-for-profit entity subject to mandatory public disclosures in its annual regulatory filings with the IRS and state charitable agencies, including the OAG. The information that Mr. Cox seeks to seal—information about his salary and benefits while working at the NRA contained in the Employment Agreement—is already public information. The NRA is required to report on the salaries and benefits of its highest paid employees every year in its IRS Form 990, and did so for Mr. Cox. Affirmation Ex. A at PDF pgs. 7, 41, 43-44. Mr. Cox has failed to demonstrate how the disclosure of this already public information would disadvantage either him or the NRA.

Furthermore, the NRA's employment and post-employment agreements with Defendant Wayne LaPierre—its highest paid executive—are also already a matter of public record.

Affirmation Exs. B and C. Mr. Cox has failed to show how disclosure of his Employment Agreement would prejudice the NRA in some way distinct from the disclosure of Mr. LaPierre's agreement. The cases cited by Mr. Cox—which relate to confidential trade secrets, and in some cases do not even involve applications to seal—are thus inapposite. *See*, *e.g.*, *Matter of Bernstein v. On-Line Software Int'l, Inc.*, 232 A.D.2d 336, 337 (1st Dep't 1996) (affirming order restricting subpoenaed materials to "attorney's eyes only" where materials included party's competitor's trade secrets).

Secondly, Mr. Cox argues that, because he is not a party to this action, he has a "compelling interest" in the sealing of his Employment Agreement and the related exhibits. NYSCEF No. 483 at 4 (internal quotation marks omitted). But he has no more of an interest in sealing the already publicly available information about his salary and benefits than the NRA does. Furthermore, Mr. Cox has failed to articulate how this information—which is two years stale as of the time of this application—would "impinge on Mr. Cox's privacy rights." *Id.*

Finally, Mr. Cox argues that sealing is warranted because his motion for costs "references the arbitration proceedings" between the NRA and himself, "which are confidential under" the relevant arbitration rules. *Id*. But for all the reasons stated in connection with OAG's motion to compel Mr. Cox to produce documents, including letters filed by Mr. Cox acknowledging the inapplicability of such arbitration rules here, the arbitration between Mr. Cox and the NRA is not confidential, because Mr. Cox and the NRA waived confidentiality, and because the relevant arbitration rules permit disclosure in response to a validly issued subpoena. *See* Motion Seq. No. 23; NYSCEF Nos. 402, 520.

CONCLUSION

For the foregoing reasons, the OAG respectfully requests that the Court deny nonparty Christopher Cox's application to seal.

Dated: December 20, 2021
New York, New York

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Attorney Certification Pursuant to Commercial Division Rule 17

I, Stephen Thompson, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Memorandum of Law in Opposition to Order to Show Cause to Seal complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 1,278 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: December 20, 2021
New York, New York

/s Stephen Thompson
_____
Stephen C. Thompson